IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.4586-CAT of 2002

Date of Decision : 15.11.2006

Union of India ... Petitioner

Versus

Sher Singh and another. ..Respondents

CORAM : Hon'ble Mr. Justice J.S. Khehar,
Hon'ble Mr. Justice S.D. Anand

Present : Mr. Puneet Jindal, Advocate,
for the petitioner.

Mr. H.S. Saini, Advocate,
for respondent No.1.

J.S.Khehar, J. (Oral)

Respondent No.1 – Sher Singh was borne on the strength of the Central Railways, Bombay. He was appointed by way of deputation in the Diesel Component Works, Patiala (hereinafter referred to as the `DCW, Patiala'). At the time of respondent No.1-Sher Singh's appointment on deputation the DCW, Patiala, was not a separate and independent cadre. Before DCW, Patiala, became an independent cadre, one Jaswinder Chawla was also working on deputation there, along with respondent No.1 – Sher Singh. Both of them were holding the post of Section Officer on regular basis, and both of them were holding the post of Assistant Accounts Officer on ad-hoc basis. A provisional seniority list as on 31.3.1991 was issued, wherein, the name of respondent No.1 – Sher Singh figured at serial No.3 and that of Jaswinder Chawla figured at serial No.5. It is on the basis of the afore-stated provisional seniority list, that respondent No.1 – Sher Singh claims superiority over Jaswinder Chawla on the issue of seniority, and

accordingly, claims the same benefits, as were bestowed upon her, from time to time.

By an order dated 5.6.1991, respondent No.1 – Sher Singh was ordered to be repatriated to his parent cadre, namely, the Central Railways, Bombay. Sher Singh impugned the afore-stated order of repatriation by filing Original Application No. 703-PB of 1991, before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to the `Administrative Tribunal'). Original Application No. 703-PB of 1991 filed by respondent – Sher Singh was disposed of by an order dated 26.4.1994. The aforesaid order is being extracted hereunder:-

> "MA 750/94 dated 26.4.94.
>
> Present : Mr. Atul Sethi for Mr. Gopal Mahajan,
> Counsel for the applicant/petitioner.
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> In MA 750/94
>
> Mr. B.S. Shant, Counsel for the respondents.
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> ORDER
>
> By this MA, the applicant in the OA prays for permission to unconditionally withdraw OA 703/PB/91. This MA is allowed.
>
> OA 703/PB/91
>
> In view of the orders passed above in MA 750/94 this OA is dismissed as withdrawn. No costs.
>
> A.V. Haridasan, JM PC. Jain, VC."

It is, therefore, apparent that Sher Singh accepted the order dated 5.6.1991 repatriating him to his parent cadre i.e. the Central Railways, Bombay. On 2.5.1994 i.e. after the respondent – Sher Singh had withdrawn Original Application No. 703/PB of 1991, Sher Singh was absorbed in the cadre of the DCW, Patiala. The order dated 2.5.1994 has far-reaching consequences

on the controversy being adjudicated upon by us. The same is, accordingly, being extracted hereunder:-

> " S.O.O. No. 1014 Dated 2.5.1994.
>
> The following orders are issued with immediate effect with the approval of competent authority:-
>
> In supersession of office order No. 680 dated 5.6.91, it has been decided to cancel the repatriation orders of Shri Sher Singh, Accounts Officer (Adhoc) to Central Railway. He shall now be borne on the cadre strength of DCW/Patiala.
>
> Sd/-
> For Chief Administrative Officer,
> DCW/Patiala."

Having become a member of the cadre of the DCW, Patiala, Sher Singh claimed regularization against the post of Accounts Officer with effect from 12.05.1993, for the simple reasons that his junior Jaswinder Chawla, had been promoted as such, with effect from the aforesaid date. When the instant claim by Sher Singh was not acknowledged by the authorities, despite the representation made by him, he approached the Administrative Tribunal by filing Original Application No. 1094-PB of 1997. The Administrative Tribunal by its order dated 11.1.2002 accepted the prayer made by Sher Singh, directing the respondents to consider the claim of respondent No.1 - Sher Singh for regularization of his services as Assistant Accounts Officer in the grade of Rs.2375-3500 with effect from the date, his junior Jaswinder Chawla was regularized as such, and also, to further consider his claim for promotion to the post of Senior Accounts Officer in the grade of Rs.3000-4500 with effect from the date, his afore-stated junior Jaswinder Chawla was promoted as such, with all consequential benefits.

The aforesaid order dated 11.1.2002 passed by the Administrative Tribunal is subject matter of challenge at the hands of the

DCW, Patiala, through the instant writ petition. The primary contention of the learned counsel for the petitioner is, that the provisional seniority list of Senior S.O./S.O. as on 31.3.1991 relied upon by Sher Singh for claiming superiority on the issue of seniority in relation to Jaswinder Chawla, is irrelevant, as the afore-stated provisional seniority list did not pertain to the cadre of DCW, Patiala. It is the vehement contention of the learned counsel for the petitioner that DCW, Patiala, was constituted as an independent cadre for the first time on 15.6.1991, and as such, the provisional seniority list as on 31.3.1991 was apparently a mis-conception insofar as the cadre of DCW, Patiala, is concerned. Additionally, it is submitted, that Jaswinder Chawla came to be inducted into the DCW, Patiala, cadre, on the day of its incorporation on 15.6.1991, whereas, prior to the incorporation of the aforesaid cadre, respondent – Sher Singh was repatriated to his parent cadre i.e. the Central Railways, Bombay, by an order dated 5.6.1991. Consequent upon the withdrawal of Original Application No. 703/PB of 1991 on 26.4.1994, the order of his repatriation dated 5.6.1991 was accepted by Respondent No.1 – Sher Singh, without any demur. Additionally, Respondent No.1 – Sher Singh came to be inducted into the cadre of DCW, Patiala, for the first time on a substantive basis on 2.5.1994. A perusal of the order dated 2.5.1994 on the basis of the phrases expressed therein, namely, "...with immediate effect..." and "....He shall now be borne on the cadre strength of DCW/Patiala..." leave no matter of doubt, that Respondent No.1 – Sher Singh was taken on the cadre of the DCW, Patiala, for the first time on 2.5.1994. At the said juncture, Sher Singh was regularly holding the post of Senior S.O. and was holding the post of Accounts Officer on ad-hoc basis, whereas, the afore-stated Jaswinder Chawla had been regularly promoted to

the post of Accounts Officer with effect from 12.5.1993. It is, therefore, the contention of the learned counsel for the petitioner, that by her absorption in DCW, Patiala, on 15.6.1991 and thereafter, on account of her promotion as Accounts Officer on regular basis with effect from 12.5.1993, the aforestated Jaswinder Chawla must be deemed to have stolen a march in terms of seniority over the respondent – Sher Singh, who was continuing in his capacity as Senior S.O., and merely as an ad-hoc Accounts Officer at the time of his induction into the cadre of DCW, Patiala, on 2.5.1994.

It is, therefore, apparent from the submissions advanced by the learned counsel for the petitioner, that the petitioner has strongly refuted the foundation/basis on which the Administrative Tribunal, by its order dated 11.1.2002 arrived at the conclusion that the respondent No.1 – Sher Singh was entitled to consequential benefits, namely, that Sher Singh was senior to Jaswinder Kaur.

The primary basis for adjudicating upon the present controversy, therefore, will have to be the determination of the inter-se seniority between the respondent No.1 – Sher Singh and Jaswinder Chawla. Learned counsel for the respondent – Sher Singh in order to repudiate the submissions advanced on behalf of the petitioner, vehemently placed reliance on the provisional seniority list as on 31.3.1991. He also placed reliance on the seniority list of Senior Section Officer as on 17.5.1997 (Annexure A-11). It is not possible for us to accept the reliance of the learned counsel for the respondent – Sher Singh on the provisional seniority list of Senior S.O./S.O. as on 31.3.1991 on account of the fact that the cadre of the DCW, Patiala had not emerged at the time when the aforesaid provisional seniority list was issued. The aforestated provisional seniority

list was apparently based on the dates of appointments of various deputationists against the posts Senior S.O./S.O., who were working at the DCW, Patiala, prior to its being created as a separate cadre. The DCW, Patiala was created as a separate cadre on 15.6.1991. Well before its creation as a separate cadre, the respondent – Sher Singh by an order dated 5.6.1991 was repatriated to his parent cadre i.e. the Central Railways, Bombay, although, the aforestated Jaswinder Chawla was inducted into the cadre of DCW, Patiala, on its incorporation on 15.6.1991. Had the respondent – Sher Singh come into the cadre of DCW, Patiala, on the same date, as Jaswinder Chawla his reliance on the provisional seniority list may have been meaningful. The order of his repatriation to the Central Railways, Bombay dated 5.6.1991, was challenged in the first instance by Respondent No.1 – Sher Singh, by filing Original Application No. 703/PB of 1991, but he subsequently, accepted his repatriation to his parent cadre in the Central Railways, Bombay, when he withdrew the aforesaid Original Application, as is apparent from the order passed by the Administrative Tribunal, dated 26.5.1994 (extracted herein above). It is only thereafter, on 2.5.1994, that the respondent – Sher Singh came to be inducted into the cadre of DCW, Patiala, with immediate effect i.e. with effect from 2.5.1994, and therefore, in terms of the aforesaid order, came to be borne on the cadre of strength of DCW, Patiala on 2.5.1994. When Respondent No.1 - Sher Singh was substantively absorbed in the cadre of DCW, Patiala, he was substantively holding the post of Senior S.O. and was holding the post of Accounts Officer only on ad-hoc basis. At the said juncture, Jaswinder Chawla had already been promoted on regular basis as an Accounts Officer with effect from 12.5.1993. It is, therefore, apparent that at the time of the induction of the

respondent – Sher Singh, into the cadre of DCW, Patiala, he occupied a post inferior to the one regularly occupied by Jaswinder Chawla. In the aforesaid view of the matter, it cannot be accepted that the respondent – Sher Singh occupied a position superior to the one occupied by Jaswinder Chawla at the time of his absorption into the DCW, Patiala, cadre. Respondent No.1 – Sher Singh had, therefore, no right to claim the same benefits as were allowed to Jaswinder Chawla from time to time.

Having arrived at the conclusion that Jaswinder Chawla was not junior to the respondent – Sher Singh, we are satisfied that the order of the Administrative Tribunal, which is based on the fact that Jaswinder Chawla was junior to the respondent – Sher Singh, deserves to be set aside. The same is, accordingly, set aside.

The instant writ petition is, accordingly, allowed.

(J.S. Khehar)
Judge

November 15, 2006
vkd

(S.D. Anand)
Judge